

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DEFENDANTS' SUGGESTIONS IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

COME NOW defendants, Robert Hampton, Glen Babich and Gale Bailey, by and through counsel, in accordance with Rule 56 of the Federal Rules of Civil Procedure, and for their Suggestions in Opposition to plaintiff's Motion for Summary Judgment. In support thereof, defendants file contemporaneously herewith their Motion for Summary Judgment and Memorandum of Law in Support, and state as follows:

Plaintiff's Motion for Summary Judgment Fails to Comply with Fed.R.Civ.P. 56

Plaintiff's Motion for Summary Judgment does not meet the requirements of Fed.R.Civ.P. 56. Plaintiff presents no evidence or factual basis to support a showing that no genuine issue as to any material facts exists for the Court's consideration.

Specifically, Fed.R.Civ.P. 56(c) provides that a moving party is entitled to summary judgment if he has made a showing that “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” William v. City of St. Louis, 783 F.2d 114 (8th Cir. 1986); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The burden on the

party moving for summary judgment “is only to demonstrate...that the record does not disclose a genuine dispute on a material fact.” City of Mt. Pleasant, Iowa v. Associated Elec. Co-Op., 838 F.2d 268, 273 (8th Cir. 1988).

Plaintiff’s Motion for Summary Judgment broadly reiterates his theories of medical negligence and the general allegations asserted against defendants arising from the medical care and treatment provided to plaintiff for an alleged “mass” located in plaintiff’s neck. Plaintiff’s Motion for Summary Judgment fails to demonstrate that the records or pleadings do not disclose a genuine dispute on a material fact at issue.

Further, the basis of plaintiff’s Motion is unclear, vague and unsupported by any facts or evidence. In sum, plaintiff’s Motion for Summary Judgment simply does not comply with Fed.R.Civ.P. 56. Accordingly, plaintiff’s Motion for Summary Judgment should be denied.

Defendants’ Suggestions in Opposition to Plaintiff’s Motion for Summary Judgment

1. Defendants deny the allegations contained in paragraph 1 of plaintiff’s Motion for Summary Judgment.
2. Defendants deny the allegations contained in paragraph 2 of plaintiff’s Motion for Summary Judgment.
3. Defendants deny the allegations contained in paragraph 3 of plaintiff’s Motion for Summary Judgment.
4. Defendants deny the remaining allegations contained in plaintiff’s Motion for Summary Judgment.
5. For further Response, defendants file their Motion for Summary Judgment and Memorandum of Law in Support contemporaneously with their Suggestions in Opposition to plaintiff’s Motion for Summary Judgment. Defendants’ Motion for

Summary Judgment and the pleadings and exhibits attached thereto demonstrate the following material facts about which there is no dispute that defendants provided plaintiff with appropriate medical care and treatment related to the alleged "mass" located in plaintiff's neck, and establish that plaintiff's claims for damages fail to demonstrate that defendants violated plaintiff's Eighth Amendment right or that defendants acted with deliberate indifference to plaintiff's serious medical needs, such that defendants would be liable to plaintiff.

Based on the foregoing, defendants, Robert Hampton, Glen Babich and Gale Bailey, request that plaintiff's Motion for Summary Judgment be denied and defendants' Motion for Summary Judgment be granted.

/s/ Peter J. Dunne

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A copy of the foregoing mailed this 15th day of December, 2004 to Mr. Don'e White, Southeast Correctional Center, Suite 6D-115-513257, 300 East Pedro Simmons Drive, Charleston, Missouri 63834.

/s/ Peter J. Dunne

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